

Nevada Division of Environmental Protection
Chemical Accident Prevention Program

Fact Sheet on Proposed Regulatory Amendments
September 29, 2000

Amendments are being proposed to the Chemical Accident Prevention Program regulation (NAC 459.952 - 459.95528). The proposed changes are the result of directives from the 1999 Nevada State Legislature through the following bills:

AB-173 Amends CAPP List of Highly Hazardous Substances

AB-535 Subjects Explosives Manufacturing to CAPP

AB-536 Requires Permits to Construct from NDEP

Copies of the amendment are available on the 'What's New' page of CAPP website at www.state.nv.us/ndep/bwm/capp or by contacting CAPP staff at 775/687-4670, ext. 3041.

The major amendments are proposed as follows:

Incorporation of Explosives into CAPP:

Operations that manufacture explosives for sale became subject to CAPP through Assembly Bill 535 (codified at NRS 459.3813) in the 1999 legislative session and became effective on October 1, 1999. Ammonium nitrate/fuel oil (ANFO) mixtures were included in the definition of explosives, therefore manufacturers of ANFO that produce the substance for sale are subject to the provisions of CAPP.

The proposed regulation details program requirements, which essentially make the manufacture of explosives for sale subject to the requirements for a tier A program as defined in current regulation (NAC 459.952 - 459.95528). However, fees are proposed to be assessed in explosives manufacturing operations differently from other tier A processes. Explosives manufacturing operations are unique in that they pose different hazards than the chemical manufacturing processes currently regulated by CAPP. Consequently, inspecting these facilities, which are relatively few in number, will require special expertise and the assistance of contract help. The fee structure currently in place for chemical manufacturing processes will not provide appropriate revenues. Total proposed annual fees will range from a minimum of \$17,100 for the least complex operations, to a maximum of \$54,100 for the most complex operations.

Sections 27 and 34 of the proposed regulation address fees and program applicability, respectively. Additionally, numerous sections of the existing regulation must be amended to insert the term 'explosives' or 'explosives manufacturing operation'. Other than this amendment, there are no programmatic changes to sections 28 - 80 of the proposed regulation, except as noted below.

Permits to Construct and Commence Operation:

Facilities that construct new processes or explosives manufacturing operations will be required to obtain permits to construct and commence operation from NDEP as a result of Assembly Bill 536 (codified at NRS 459.3829) passed in the 1999 legislative session, which became effective on January 1, 2000.

The law applies to new processes or explosives manufacturing operations that commenced construction after January 1st. Plant modifications are not subject to these provisions.

The proposed regulation details program requirements by adding new sections, 11 through 26. The intent of the regulation is to ensure that employee and public safety is enhanced by having all CAPP program elements satisfied prior to startup. The permit is actually issued in two parts; prior to construction and prior to startup.

Permit to Construct:

Prior to facility construction, NDEP must approve:

1. Facility mitigation measures implemented to eliminate public exposure;
2. Emergency response plan and HAZMAT capability;
3. Select design information and process hazard analysis;
4. Inspection personnel; and
5. Select drawings, specifications and calculations.

Prior to facility construction, NDEP must ensure:

Conformance with CUP issued pursuant to NRS 278.147 for CAPP-related portions of the process.

Prior to facility construction, NDEP must complete:

Public review and comment process.

Permit to Commence Operation:

Prior to startup or bringing substances on site, NDEP must:

1. Have issued a permit to construct;
2. Have verified that any local building department foundation or structural permits for CAPP-related portions of the process have been received;
3. Have received the assessment report and verified completion of all P.T.A.H. measures;
4. Determine that all CAPP-related prevention program requirements not checked during the permit to construct phase have been satisfied; and
5. Ensure that any plan check fee balance has been received.

Permit Fees:

1. Fees will be assessed based upon level of effort expended in the review;
2. NDEP and contract effort will be utilized;
3. Annual CAPP fees for the new facility will be excused for the first two state fiscal years of operation due to the extensive initial review; and
4. Fees will vary significantly, based upon system complexity.

Designs in Progress:

Any new process or explosives manufacturing operation not under construction prior to January 1, 2000 must obtain these permits. When current construction schedules conflict with regulation promulgation timing, consult with NDEP for guidance.

Regulatory List Amendments:

The statutory list of highly hazardous substances was amended through Assembly Bill 173 in the 1999 legislative session and became effective on May 25, 1999. The bill specifically amends the list of highly hazardous substances in NRS 459.3816, to more closely correspond with Appendix A of OSHA's Process Safety Management regulation. One new substance was added, mixture concentrations were clarified and several threshold quantities were revised.

The proposed regulation amends NAC 459.95336 (section 35) to reflect these changes for tier A substances. Additionally, clarification is made to ensure that any statutory revision to NRS 459.3816 is automatically subject to the provisions of the tier A program, even without regulatory amendment.

Miscellaneous Amendments:

Miscellaneous minor amendments are proposed as follows:

Section 39: Amend NAC 459.95348 to simplify and clarify registration submission timing.

Section 40: Amend NAC 459.9535 to clarify the amount of substance that a new process or explosives manufacturing operation must register initially.

Section 42: Amend NAC 459.95354 to require the reporting of the release of any amount of any CAPP listed substance, regardless of whether or not the substance is present in excess of the threshold quantity.

Section 51: Amend NAC 459.95414 to clarify that an initial PHA conducted to satisfy other agency requirements will suffice for a CAPP PHA, only if the PHA reflects the current system.

Section 53: Amend NAC 459.95418 to clarify that employee training records shall include test records.

Section 62: Amend NAC 459.9544 to clarify that, regardless of the presence of a TPQ of an EPCRA substance, the facility must coordinate emergency response with the local responder.

Section 65: Amend NAC 459.9545 to clarify assessment report submission requirements.

Section 71: Amend NAC 459.95468 to simplify assessment report update requirements.

Section 72: Amend NAC 459.95476 to clarify the timing for assessment team qualification submittal.

Section 80: Amend NAC 459.95528 to amend codes adopted by reference.

Schedule and Public Comment:

The amendments will be proposed to the State Environmental Commission in January, 2001. Written comments will be accepted through November 10, 2000. Public workshops will be held throughout the state in October, 2000. Refer to the notice of public workshops for times and locations.